

Notice of Allowability

Application No.

08/366,083

Examiner

Terry A. McKelvey

Applicant(s)

POMERANTZ ET AL.

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE filed 9/13/04.
2. ☒ The allowed claim(s) is/are 100-108, 115-117 and 119.
3. ☒ The drawings filed on 29 December 1994 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 9/13/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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EXAMINER'S AMENDMENT

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/13/04 has been entered.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brenda Jarrell on November 22, 2004.

The application has been amended as follows:

In the claims:

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Claims 109-111 have been canceled.

100. (Currently amended) A nucleic acid encoding a ~~non-~~
~~naturally-occurring~~ chimeric transcriptional regulatory protein
that comprises:

~~a chimeric nucleic acid binding domain including at least~~
two heterologous nucleic acid binding ~~motifs~~ domains, at least
one of which is a zinc finger, wherein each nucleic acid binding
domain binds a portion of a composite nucleotide sequence; and

a transcriptional regulatory domain, wherein the ~~non-~~
~~naturally-occurring~~ chimeric transcriptional regulatory protein
(a) binds preferentially to the composite nucleotide sequence
over any of said portions thereof ~~recognizes a nucleic acid~~
~~sequence not recognized by a protein containing only one of the~~
~~nucleic acid binding motifs present in the transcriptional~~
~~regulatory protein~~, and (b) when bound to the ~~recognized~~
composite nucleotide sequence, regulates transcription thereof
from an operatively linked promoter.

101. (Currently amended) The nucleic acid of claim 100,
wherein the nucleic acid binding ~~domain includes~~ domains include
at least two zinc fingers.

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102. (Currently amended) The nucleic acid of claim 100, wherein the nucleic acid binding ~~domain includes~~ domains include at least a second nucleic acid binding ~~motif~~ domain selected from the group consisting of helix-loop-helix ~~motifs~~ domains, helix-turn-helix ~~motifs~~ domains, basic domains, zinc fingers, and combinations thereof.

105. (Currently amended) The nucleic acid of claim 100, wherein at least one nucleic acid binding ~~motif~~ domain is selected from the group consisting of helix-loop-helix ~~motifs~~ domains, helix-turn-helix ~~motifs~~ domains, basic ~~regions~~ domains, and combinations thereof.

108. (Currently amended) The nucleic acid of claim 100, wherein the at least two nucleic acid binding ~~motifs~~ domains are separated by at least one amino acid.

117. (Currently amended) A kit comprising a vector of claim 115 and a gene operably linked to a composite binding site to which the ~~non-naturally-occurring~~ chimeric transcriptional regulatory protein encoded by the ~~vector~~ nucleic acid binds.

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119. (Currently amended) A method for modulating expression of a gene in a cell, comprising:

providing a cell containing a chimeric DNA binding element operatively linked to a promoter which is operatively linked to the gene; and

expressing the nucleic acid of claim 100 in the cell, such that the ~~non-naturally occurring~~ chimeric transcriptional regulatory protein is produced, binds to the chimeric DNA binding element, and regulates transcription of the gene from the promoter.

Conclusion

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem

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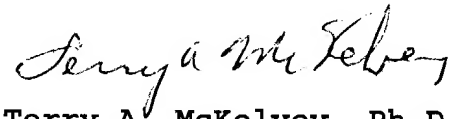
with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Any inquiry concerning rejections or objections in this communication or earlier communications from the examiner should be directed to Terry A. McKelvey whose telephone number is (571) 272-0775. The examiner can normally be reached on Monday through Friday, except for Wednesdays, from about 7:30 AM to about 6:00 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to his office).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel can be reached at (571) 272-0781.



Terry A. McKelvey, Ph.D.
Primary Examiner
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December 10, 2004